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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/752,953	01/07/2004	Timothy J. Crist	2973-A-36	4414

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Cahill, von Hellens & Glazer P.L.C.  
155 Park One  
2141 East Highland Avenue  
Phoenix, AZ 85016

EXAMINER

NGUYEN, SON T

ART UNIT PAPER NUMBER

3643

DATE MAILED: 05/05/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

**Application No.**

10/752,953

**Applicant(s)**

CRIST ET AL.

**Examiner**

Son T. Nguyen

**Art Unit**

3643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 07 January 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on 07 January 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 1/7/04.  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.  
5) ☐ Notice of Informal Patent Application (PTO-152)  
6) ☐ Other: \_\_\_\_\_.

## DETAILED ACTION

### *Claim Rejections - 35 USC § 102*

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. **Claims 1-2,7,12** are rejected under 35 U.S.C. 102(b) as being anticipated by Farkas (US 4947795 on form PTO-1449).

For claims 1 & 2, Farkas teaches a method of operating an electronic apparatus to control vocalizing by a dog, the apparatus including a housing 12 supported by a strap 14; first and second stimulus probes 18,20 connected to a surface of the housing; a sensor 23 supported by the housing; control circuitry 22, including a controller, in the housing having an input coupled to an output of the sensor, the control circuitry including output terminals producing aversive stimulus signals between the first and second electrodes in response to barking by the dog (col. 3, lines 53-68, col. 4, lines 1-30);

The method comprising electronically converting sounds from the dog into a sequence of signals, operating the controller to determine frequencies, operating the controller to determine sub-ranges, then incrementing totals of the frequencies, determining whether the barking sounds constitute valid bark, operating the microcontroller to cause appropriate stimulus to the animal (col. 3, lines 35-68, cols. 4,5,6, all lines).

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For claims 7 & 12, Farkas teaches an electronic apparatus to control vocalizing by a dog comprising a housing 12 supported by a collar 14; first and second stimulus probes 18,20 connected to a top surface of the housing; a sensor 23 supported by the housing; control circuitry 22, including a controller, in the housing having an input coupled to an output of the vibration sensor, the control circuitry including output terminals producing aversive stimulus signals in response to barking by the dog (col. 3, lines 53-68, col. 4, lines 1-30), the control circuitry electronically converting sounds from the dog into a sequence of signals, the controller executing a stored program to determine frequencies, the controller executing the stored program to determine sub-ranges and incrementing totals of the frequencies, the controller executing the stored program to determine whether barking sounds is valid, and the controller executing the stored program to cause stimulus signals between the electrodes (col. 3, lines 35-68, cols. 4,5,6, all lines).

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. **Claims 3-6,8-11** are rejected under 35 U.S.C. 103(a) as being unpatentable over Farkas (as above).

For claim 3, Farkas is silent about the range of frequencies is from 150 hertz to 800 hertz. It would have been obvious to one having ordinary skill in the art at the time

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the invention was made to have the range of frequencies is from 150 hertz to 800 hertz in the method of Farkas, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

For claim 4, Farkas is silent about the number of sub-ranges is 16. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the number of sub-ranges being 16 in the method of Farkas, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

For claim 5, Farkas is silent about the sub-ranges are contiguous across the range. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the sub-ranges are contiguous across the range in the method of Farkas, since it has been held that where routine testing and general experimental conditions are present, discovering the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

For claim 6, Farkas is silent about the predetermined interval of time being approximately 120 milliseconds. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the predetermined interval of time being approximately 120 milliseconds in the method of Farkas, since it has been held that where routine testing and general experimental conditions are present, discovering

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the optimum or workable value/ranges until the desired effect is achieved involves only routine skill in the art.

For claim 8, see claim 3.

For claim 9, see claim 4.

For claim 10, see claim 5.

For claim 11, see claim 6.

### ***Double Patenting***

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 7,12 provisionally rejected under the judicially created doctrine of double patenting over claims 1-2,4 of copending Application No. 10/752795. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant

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application are claiming common subject matter, as follows: both 10/752795 and 10/752953 claim common subject matter such as a housing, first and second stimulus probes, sensor, control circuitry, and the function of the control circuitry (as claimed in claim 2 of 10/752795 and claim 7 of 10/752953).

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Son T. Nguyen whose telephone number is 571-272-6889. The examiner can normally be reached on Mon-Thu from 10:00am to 5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter M. Poon can be reached on 571-272-6891. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Son T. Nguyen

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Primary Examiner  
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